CF0000057504

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cr. Appeal No. 1067 of 1989.

APPELLANT :- Mehatru @ Deonath aged about 20 years (In Jail) r/o Gullu P.S. Arang Distt. Raipur M.P.

V/s

RESPONDENT:- State of M.P. through P.S. Arang, Raipur M.P.

8959

15-11-89

APPEAL U/S 374 OF THE CODE OF CRIMINAL PROCEDURE.

(3)

(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1067/1989

Appellant : Mehatru alias Deonath

Versus

Respondent : State of M.P.

Post for pronouncement of judgment on

13 **-7-2005.**

Sd/-
Dhirendra Mishra
Judge

13-7-2005

(40)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1067/1989

Appellant : Mehatru alias Deonath

Versus

Respondent : State of M.P.

Smt. Indira Tripathi learned counsel for the appellant.

Shri Vinod Shrivastava learned G.A for the respondent/State.

J U D G M E N T

(Pronounced on 13-7-2005)

Dhirendra Mishra,J

The appellant has preferred this appeal against the judgment dated 29/08/1989 passed by Additional Sessions Judge, Raipur convicting him under Sections 363,366 and 376 of the IPC and sentencing to undergo RI for two years with fine of Rs. 200/-, RI for five years with fine of Rs. 300/- and RI for seven years with fine of Rs. 400/- respectively.

Case of the prosecution is that prosecutrix aged about 15 years on the date of incident was abducted by the appellant on 20/03/87 at about 8.00 p.m. when she had gone to answer the call of nature. She was

taken by the accused/appellant on a bicycle to the house of his maternal uncle namely Bihari at village Lakholi where she was confined up to 23/03/87 and subjected to rape by him. Report was lodged on 21/03/2005 by P.W.-2 Keshav, the father of the prosecutrix vide Ex.P.1 and she was recovered on 23/03/87 vide recovery memo of Ex.P-5. She was medically examined by the doctor vide medical report Ex.P-8. She was also sent to the radiologist - Dr. S. C. Vishnoi P.W.7 and the report of the radiologist is Ex.P.6. During investigation petticoat of the prosecutrix was seized vide recovery memo Ex.P.2 and P.3. After recording the statements of the witnesses charge sheet was filed and the case was committed to the Court of Sessions. The appellant abjured the guilt. The prosecution examined in all 10 witnesses and on the basis of their statements convicted and sentenced the appellant as above.

Learned counsel for the appellant submits that the impugned judgment is erroneous on the ground that there is no conclusive evidence regarding the age of the prosecutrix and even then the Court below relying solely on the school certificate and report of the radiologist has held that she was less than 16 years of age on the date of incident and accordingly convicted and sentenced the appellant as above.

Learned counsel for the respondent/State countering the submissions

of the learned counsel for the appellant submits that the impugned judgment does not suffer from any illegality and the appellant has been rightly convicted and sentenced as mentioned above.

I have heard learned counsel for the parties and gone through the material available on record.

The sole question for adjudication of this appeal is whether at the relevant time the prosecutrix was minor. Learned trial Court relying on the school certificate Ex.P-14 issued by the Head Master of Primary School, Guloo which has been proved by P.W.10, Parasram, has arrived at the conclusion that her date of birth was 24/05/73 and as such she was minor on the date of incident.

From the perusal of the record it appears that there is no document to show that the said certificate was issued during investigation though the same was filed along with the charge sheet. The said document has been proved by Parasram P.W.10 who has stated that the certificate in question was prepared on the basis of admission and withdrawal register of the pupil. However, the said register has not been produced. P.W.-2, the father of the prosecutrix in paragraph 6 of his statement has categorically stated that at the time of admission he did not supply any date of birth of his daughter to the teacher of that school namely, Parasram and the same has been recorded by him as per his

approximation. Mother of the prosecutrix, P.W.5 has also stated that she did not know when her daughter i.e. the victim was born and how old was she at the time of incident. It is also not disputed that the victim is a married girl and the incident took place while she had come to her paternal house for a brief period. From the perusal of material available on record, the document of Ex.P.14 cannot be said to be a public document as the same was issued by the Head Master of the Primary School and the same does not satisfy the requirement of being the certified copy of the school administration register in which relevant entry as to her date of birth was entered and as such it is not admissible in evidence in view of the provisions contained in Section 65 (e) of the Evidence Act. Even assuming that Ex.P.14 may be construed as a document based on the entries in the school register and as such it is admissible in evidence, the date of birth mentioned therein cannot be relied upon implicitly in view of the statement of the father of the victim who admitted her in the school and according to his own admission the entries were made on the basis of approximation of the concerned teacher.

P.W.7 the radiologist has opined that the age of the prosecutrix on 23/03/87 was between 15 and 16 years. However, she has not ruled out the possibility of variation of three years plus – minus on either side. Thus, considering the fact that the victim was a

married girl on the date of incident and the other evidence on record, I am of the opinion that finding of the trial Court that the prosecutrix was less than 16 years of age at the time of incident is not correct as there was no conclusive evidence available on record to arrive at such a conclusion.

The next question to be decided is whether the victim was taken by the appellant forcibly without her consent and was kept in confinement from 20.3.1987 to 23.3.1987 and there she was subjected to rape by him during these three days. From perusal of the statement of PW-1 it is apparent that she was taken by the appellant from village Gullu to village Lakholi which is two Kose (10 Kms.) away therefrom, on bicycle in the presence of 4-5 other persons of the village. The other passer-by also seen her being taken away by the appellant and despite her cries none came to her rescue. It is also apparent from her statement that she could not jump from the bicycle as the appellant had tied her from her own Sari with his waist and that during her stay at Lakholi she used to go out to the pond and even then she did not flee from the confinement of the accused, makes her version highly improbable and untrustworthy. PW-4 Dhanbai who was also present at the time of abduction according to the prosecution has stated that the appellant gagged the mouth of the victim by inserting a piece of cloth, is contradicted by the victim herself as she has not stated this fact in her statement.

Thus taking into consideration the totality of the evidence available in the case the forcible abduction, confinement for three days and commission of rape during this period has not been proved by the prosecution and the Court below ought to have given benefit of doubt to the appellant.

It is already held that the prosecution has failed to prove that the victim was minor at the time of incident. It has also been held that there is material available on record on the basis of which the possibility of the victim being consenting party can not be ruled out. Thus in view of the aforesaid discussion I am of the opinion that the appeal deserves to be allowed and the impugned judgment dated 29.8.1989 of conviction and sentence mentioned above is liable to be set aside.

Consequently, the appeal is allowed and the impugned judgment is set aside. Appellant is acquitted of the charges leveled against him. If the fine amount is already paid, it is directed to be refunded to the appellant. Bail bond executed by the appellant stands discharged.

Sd/-
Dhirendra Mishra
Judge